



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2016-0655; FRL-10014-35-Region 4]

Air Plan Approval; SC and TN: Minimum Reporting Requirements in SIPs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing approval of a portion of State Implementation Plan (SIP) revisions for South Carolina submitted by the South Carolina Department of Health and Environmental Control (SC DHEC) through letters dated August 8, 2014, and August 12, 2015, and a portion of a SIP revision for Tennessee submitted by the Tennessee Department of Environment and Conservation (TDEC) through a letter dated February 17, 2014. The South Carolina SIP revisions modify a provision that requires fossil fuel-fired steam generators having a heat input capacity of more than 250 million British thermal units (Btu) per hour (Btu/hr) to submit continuous opacity monitoring reports required by the SIP on a quarterly basis. This provision is modified to allow such reporting on a semiannual basis instead. The South Carolina SIP does not contain any other continuous opacity monitoring report requirements for the subject sources, and this rule revision has no impact on any federal reporting requirements. Specifically, the South Carolina SIP revisions do not override any other reporting requirements that might continue to require more frequent reporting. The Tennessee SIP revision adds a new provision that requires any source subject to the State's title V operating permit program to submit emission monitoring reports required by the SIP on a semiannual basis rather than on a quarterly basis. Much like the South Carolina SIP revisions, the Tennessee SIP

revision has no impact on any federal reporting requirements and does not override any other reporting requirements that might continue to require more frequent reporting. EPA is approving these changes to the South Carolina and Tennessee SIPs because they are consistent with recent changes to federal regulations and because the South Carolina and Tennessee SIP revisions are consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2016-0655. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960, or Sean Lakeman, Air Regulatory

Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Huey can be reached by telephone at (404) 562-9104 or via electronic mail at huey.joel@epa.gov. Mr. Lakeman can be reached by telephone at (404) 562-9043 or via electronic mail at lakeman.sean@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In a July 21, 2020 (85 FR 44027), notice of proposed rulemaking (NPRM), EPA proposed to approve revisions to the South Carolina SIP, submitted by SC DHEC on August 8, 2014, and August 12, 2015, concerning the frequency with which fossil fuel-fired steam generators are required to submit continuous opacity monitoring reports to the State. In that NPRM, EPA also proposed to approve a revision to the Tennessee SIP, submitted by TDEC on February 17, 2014, concerning the frequency with which major sources subject to the title V operating permit program are required to report excess emissions data to the State. These SIP revisions would change certain existing quarterly emission reporting requirements to semiannual requirements for affected facilities. Due to a conflict with the federal rule at that time, EPA stated that the Agency did not intend to take final action on these SIP revisions unless and until EPA has taken final action to revise Appendix P of 40 CFR part 51 (Appendix P), as proposed in the Agency's February 21, 2020, notice of proposed rulemaking.

In a final action published on August 14, 2020 (85 FR 49596), EPA finalized revisions to Appendix P that changed the minimum frequency for submitting reports of excess emissions from "each calendar quarter" to "twice per year at 6-month intervals" for the four source categories subject to Appendix P (fossil fuel-fired steam generators, nitric acid plants, sulfuric

acid plants, and fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries). As a result, states may establish semiannual reporting as the minimum frequency for affected sources to submit reports of excess emissions to the state. This reporting frequency aligns with what EPA has generally established as the reporting frequency applicable to the Appendix P source categories under more recently updated regulations. Due to this change to Appendix P, the South Carolina SIP revision and the Tennessee SIP revision are no longer in conflict with the federal requirement for quarterly excess emissions reporting for the four source categories subject to Appendix P.

EPA received no adverse comments on the July 21, 2020, NPRM, which includes the full rationale behind the proposed approval of the revisions to the South Carolina and Tennessee SIPs. EPA is taking final action to approve these SIP revisions because they are consistent with the provisions of the CAA.

II. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference South Carolina Regulation 61-62.5 Standard No. 1, Section IV, “*Opacity Monitoring Requirements*,” state effective September 23, 2016,¹ which revises the quarterly reporting requirement to a semiannual requirement. Also, in accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference Tennessee Rule 1200-03-10-.02, “*Monitoring of Source Emissions, Recording, and Reporting of the Same Are Required*,” state effective February 5, 2013, which revises the

¹ The effective date of the change to South Carolina Regulation 61-62.5, Standard No. 1, Section IV, made in South Carolina’s August 8, 2014, and August 12, 2015, SIP revisions is June 26, 2015. However, for purposes of the state effective date included at 40 CFR 52.2120(c), that change to South Carolina’s regulation is captured and superseded by South Carolina’s update in a November 4, 2016, SIP revision, state effective on September 23, 2016, which EPA previously approved on June 25, 2018. See 83 FR 29455.

quarterly reporting requirement to a semiannual requirement. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in their respective SIPs, have been incorporated by reference by EPA into those plans, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.²

III. Final Actions

EPA is approving a portion of South Carolina’s August 8, 2014, and August 12, 2015, SIP revisions to change Rule 61-62.5 Standard 1, Section IV.B.1 to provide that the owner or operator of any fossil fuel-fired steam generators having a heat input capacity of more than 250 million Btu/hr shall submit a written continuous opacity monitor report to SC DHEC semiannually or more often if requested, thus revising the existing requirement to submit such reports on a quarterly basis. EPA is also approving Tennessee’s February 17, 2014, SIP revision including a change to Rule 1200-03-10-.02 to add a new subparagraph (2)(d) which states: “Any source located at a facility required to obtain a major source operating permit in accordance with the provisions of paragraph (11) of Rule 1200-03-09-.02 may submit the reports required by this rule on a semi-annual basis.” This revision to the Tennessee SIP changes the existing SIP requirement for title V sources to submit monitoring reports required by Rule 1200-03-10-.02 to the State from a quarterly basis to a semiannual basis.

² See 62 FR 27968 (May 22, 1997).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. See 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, for Tennessee, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

For South Carolina, because this final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this final action for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The CIN also retains authority to impose regulations applying higher

environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 27, 2020.

Mary Walker,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart PP – South Carolina

2. In § 52.2120 amend the table in paragraph (c) under by revising the entry for “Section IV” under “Standard No. 1, Emissions from Fuel Burning Operations” under “Regulation No. 62.5, Air Pollution Control Standards” to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

EPA-Approved South Carolina Regulations

State citation	Title/Subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Regulation No. 62.5	Air Pollution Control Standards			
<i>Standard No. 1</i>	Emissions from Fuel Burning Operations			
**	**	*	*	*
Section IV	Opacity Monitoring Requirements	9/23/2016	Insert date of publication in the <u>Federal Register</u> , Insert citation of publication	
**	**	*	*	*

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Subpart RR – Tennessee

3. Section 52.2220(c) Table 1 is amended under “Chapter 1200-3-10 Required Sampling, Recording, and Reporting” by revising the entry for “Section 1200-3-10-.02” to read as follows:

§ 52.2220 Identification of plan.

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(c) * * *

TABLE 1 – EPA Approved Tennessee Regulations

State citation	Title/Subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
CHAPTER 1200-3-10 REQUIRED SAMPLING, RECORDING, AND REPORTING				
**	**	*	*	*
Section 1200-3-10-.02	Monitoring of Source Emissions, Recording, and Reporting of the Same are Required	2/5/2013	Insert date of publication in the <u>Federal Register</u> , Insert citation of publication	
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[FR Doc. 2020-19346 Filed: 9/17/2020 8:45 am; Publication Date: 9/18/2020]